

Exhibit A

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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:
DRUG MART PHARMACY CORP., : CV-93-5148 (ILG) (SMG)
et al., :
Plaintiffs, :
: May 1, 2009
v. :
: Brooklyn, New York
AMERICAN HOME PRODUCTS CORP., :
et al., :
Defendants. :
:
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TRANSCRIPT OF CIVIL CAUSE FOR CONFERENCE
BEFORE THE HONORABLE STEVEN M. GOLD
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For the Plaintiff: WYATT DURETT, ESQ.
NICHOLAS A. GRAVANTE, ESQ.
MICHAEL ENDLER, ESQ.

For the Defendant: PAULA RENDER, ESQ.
MR. CROSS, ESQ.
VICKIE SMITH, ESQ.

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transcript produced by transcription service

1 THE COURT: Okay. Well, if they're not drugs that
2 people take over a lengthy period of time, then maybe
3 there's an argument to be made that those drugs ought not to
4 be discovered.

5 MR. EGAN: But if your Honor is talking about the
6 responses to interrogatories --

7 THE COURT: I'm not talking about the responses to
8 interrogatories. We were here last time. We talked about a
9 process -- let me take that back. I don't know whether the
10 plaintiffs have been producing this information in the form
11 of interrogatory responses or as exhibits to the letter
12 motions they've been filing with the Court.

13 If there's some defendant who believes that it
14 matters, I will ask the plaintiffs to file the same
15 information in the form of a supplemental response to
16 interrogatories, and your i's can be dotted and t's crossed
17 in whatever ways that accomplishes for you.

18 MR. EGAN: Your Honor, my only -- the end game, it
19 seems to me, is once we get -- if that's not from additional
20 third party discovery, if that's information they already
21 have and it's in the form of updated interrogatories or
22 whatever, then I would like the opportunity to move for
23 summary judgment against those plaintiffs who haven't been
24 able to identify any drugs.

25 THE COURT: I would hope that you won't have to

1 make that motion because if the plaintiffs have pharmacies
2 that can't identify -- well, let me take that back. I know
3 that those pharmacies are still claiming a right to
4 injunctive relief. But to the extent that they're seeking
5 damages and they can't -- we were over this at great length
6 last time, I think. I'm not sure if you were here.

7 MR. EGAN: No, I was not here last time, your
8 Honor.

9 THE COURT: But I'm pretty sure that the record of
10 the last conference will include a specific statement by
11 plaintiff's counsel that at least with respect to proof of
12 damages, that they will only seek damages for specifically
13 identifiable customers with respect to specifically
14 identifiable drugs.

15 So you don't have to make a motion because I have
16 a representation from counsel for the plaintiffs that they
17 will not press this case forward with respect to any
18 customer they cannot identify and prove that they were
19 taking drugs somewhat chronically, whether they were
20 maintenance drugs or whether they were drugs for a chronic
21 condition that caused him to take them sporadically,
22 frequently, over many years, and then started acquiring
23 their drugs from someone they can prove received some kind
24 of a rebate or a discount, as they perceive it, not as you,
25 defendants, characterize it to be.

1 So you don't have to make the motion. You can get
2 a notice to admit or a stipulation, I'm confident, based
3 upon the record of the last conference. If you can't,
4 before you make a motion, you come back to me and I would
5 like to ask plaintiff's counsel why not.

6 MR. EGAN: Am I correct, your Honor -- bear with
7 me, and I apologize if --

8 THE COURT: I am.

9 MR. EGAN: I apologize if these issues were
10 discussed last time, when I wasn't here. But as I
11 understand it, what your Honor is saying is that the
12 information that plaintiffs now have in hand, either in the
13 form of responses to interrogatories that they have supplied
14 or some supplement to those interrogatories now, not after
15 additional third party discovery, that will be the basis on
16 which they will decide how many of these plaintiffs have
17 valid cases against each of the defendants. Is that right?

18 THE COURT: I think that's right. Well, let me
19 say it differently. My understanding was that each pharmacy
20 was going to have to be able to identify specific people who
21 were its customers and who were buying brand name
22 prescription drugs from it and stopped, and that that was a
23 threshold for any pharmacy plaintiff to seek to recover
24 damages in this action. And any pharmacy that can't say, I
25 had this customer buying this drug and he stopped, and I

1 there is no doubt that we have folks that we've provided a
2 very small amount of information for. The interrogatory
3 responses are what they are, so we can't suggest otherwise.
4 But what I do not know is how difficult it's going to be for
5 us. It may be the case that, as part of this process, it
6 will not be that hard for us to identify a lot more, and it
7 will not take that long to do so.

8 THE COURT: I'm lost. Here's why. Let me just
9 explain it in very simple terms. We understand each other
10 that the first step before any plaintiff pharmacy is
11 entitled to nonparty discovery or discovery of the
12 defendants is that they're going to identify the patients
13 that they no longer service. Say something out loud, so the
14 recorder gets it.

15 MR. ENDLER: That's correct.

16 THE COURT: There are some plaintiffs who have no
17 records at all and can't identify any customers that they
18 lost.

19 MR. ENDLER: That is also correct.

20 THE COURT: Those plaintiffs, how many of them
21 there are and who they are, has that been disclosed to the
22 defendants?

23 MR. ENDLER: It has not, and I'm not certain that
24 we have that specific answer today.

25 THE COURT: I want to know when you'll have it,

1 understand that that is a list of drugs and time periods
2 that we're going to have to confront through the case or
3 just like a sample to guide us in discovery?

4 THE COURT: I understood that that was it for the
5 case.

6 MR. DURETT: Depending on -- the answer to that
7 is, I don't know, sitting here today, and Mr. Fruit (ph) and
8 I were exchanging notes -- I don't know, sitting here today,
9 when the group that we have put together, made up of
10 pharmacists and lawyers, will be able to convene and come up
11 with the drugs that we're then going to test. And then we
12 frankly hired two people who are doing this for us. So I
13 would not want to make a representation today as to when we
14 can produce that. But generically, that is what we intend
15 to produce.

16 THE COURT: Well, that's fine, but you understand
17 that I'm not going to require them to start digging for
18 contracts until we have it.

19 MR. DURETT: Exactly, so we're going to --

20 THE COURT: And once we have it, we're not going
21 to come back and say, oh, I want to add some time frames and
22 some drugs.

23 MR. DURETT: We do understand that and I think we
24 all understand that. That's why I'm hesitant to commit to a
25 time. But believe me, we are as anxious for that time to

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18 I certify that the foregoing is a correct transcript
19 from the electronic sound recording of the proceedings in
20 the above-entitled matter.

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25 ELIZABETH BARRON

May 6, 2009